



STATE OF NORTH CAROLINA  
DEPARTMENT OF TRANSPORTATION

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**North Carolina Board of Transportation  
Environmental Planning and Policy Committee  
Meeting Minutes for September 4, 2002**

A meeting of the Environmental Planning and Policy Committee (EPPC) was held on September 4, 2002 at 8:00 AM in the Board Room (Room 150) of the Transportation Building. Nina Szlosberg chaired the meeting. Other Board of Transportation members that attended were:

Conrad Burrell	Frank Johnson
Mac Campbell	Cam McRae
Marion Cowell	Nina Szlosberg
Nancy Dunn	Lanny Wilson
Doug Galyon	

Other attendees included:

Debbie Barbour	Pat Ivey	Benton Payne
Donnie Brew	Berry Jenkins	Allen Pope
John M. Burns Jr.	David King	Lubin Prevatt
Roberto Canales	Neil Lassiter	Ken Putnam
Craig Deal	Don Lee	Ruth Sappie
Janet D'Iganzio	Robin Little	David Schiller
C. A. Gardner	Sharon Lipscomb	Roger Sheats
Bill Gilmore	Grady McCallie	Roy Shelton
Lisa Glover	Carl McCann	Bruce Thompson
Carl Goode	Ehren Meister	Greg Thorpe
Gail Grimes	Ashley Memory	Jim Trogden
Drew Harbinson	Mike Mills	Steve Varnedoe
Mike Holder	Jon Nance	Ron Watson
Julie Hunkins	Sandy Nance	
David Hyder	Ken Pace	

Ms. Szlosberg called the meeting to order. After opening remarks, Ms. Szlosberg accepted a motion to approve the minutes as presented from the August 7, 2002 EPPC meeting. A motion was made by Conrad Burrell and seconded by Frank Johnson. The motion was approved.

Ms. Szlosberg introduced David Allsbrook, Deputy Chief Engineer for Operations, to present the status of the State Minimum Criteria Permanent Rulemaking. Mr. Allsbrook noted that all board members had been given

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copies of the minimum criteria and the comments submitted during the public comment period. He began by briefly reviewing the history of the permanent rule making procedures up to this point. The public comment period for the permanent rules was from July 15, 2002 until August 15, 2002. Mr. Allsbrook reviewed the submitted public comments and the staff position for each. Public comments were submitted by Carolina AGC (AGC), Conservation Council of North Carolina (CCNC) and the Southern Environmental Law Center (SELC). All comments were favorable; however, there were some concerns about particular items of the minimum criteria. The areas of concern were items 8, 12, 15, 27, and the Exceptions. Mr. Allsbrook proceeded to present the comments on each item.

Item 8 received three comments. The first was that the proposed minimum criteria authorizes alternation of a highway corridor through “non-contiguous” disturbances. This was also a comment during the temporary rule making process. The staff addressed this comment by changing the rule to make sure the project is “contiguous.” The example used in the comment was blasting of a road at different spots impacting less than 10 acres. DOT staff feels they have taken care of this comment by changing it to contiguous.

Ms. Szlosberg asked for clarification of the definition of “project” under these rules. Mr. Allsbrook responded that a disturbance of up to 10 areas of previously undisturbed right-of-way is permitted with this item. Right of way that is already disturbed doesn’t count towards the 10 acres. An example could be if you are constructing a turn lane on the outside of the area previously disturbed effecting only an acre or two or a turn lane between two intersections outside the existing ditch. A project larger than 10 acres of previously undisturbed land must move forward with the Environmental Assessment (EA). Typical projects covered by this item include spot safety projects, small urban projects and some small TIP projects. Most of the projects under this criterion can be considered routine projects. A comparison to the Federal Highway Administration’s Categorical Exclusion (CE) was made. A CE doesn’t have an acreage limit and is very similar to our minimum criteria. Mr. Allsbrook believes the state minimum criteria is more restrictive because it does limit the acreage. He feels 10 acres is a fair amount. The CE only applies to federally funded projects while the state minimum criteria can only be applied to state-funded projects. Ms. Szlosberg clarified that a “project” refers to a funded project.

The second set of comments was concerning item 8 (b) -- “adding lanes for travel, parking, weaving, turning, or climbing.” The Southern Environmental Law Center expressed a concern that there could be construction of an unlimited number of miles of new travel lanes in the median or along the shoulder using the 10-acre threshold, which could have significant impacts. As noted in the earlier discussion, if the project will fall within the previously disturbed right of way, like the median, the DOT can add new lanes up to 10 acres of previously undisturbed land. If the project exceeds 10 acres, then NCDOT must move forward with an EA. The staff believes these types of division projects are routine and would not have significant impacts. Another concern expressed in the comments submitted was that these criteria would allow for the construction of new interchanges on existing limited access highways. Mr. Allsbrook noted that there was some confusion with this and that it was never intended for construction of interchanges to be a part of the minimum criteria. Ms. Szlosberg reiterated that comment and wondered if wording could be added to clarify that the construction of interchanges is not intended under the State Minimum Criteria. She suggested the addition of “excluding interchanges.” This would spell out what the intent of the department is since so many secondary impacts can occur in conjunction with the addition of interchanges. Frank Johnson asked a question regarding the construction of new ramps at existing bridges or grade separations and whether access roads could be construed as interchanges. Mr. Allsbrook clarified that NCDOT staff interprets interchanges as grade separations – not at-grade intersections. Mr. Johnson noted that

the staff should think about the wording to describe grade separation or interchange. Ms. Szlosberg commented that whatever its purpose, an interchange opens up an area previously not accessible and certain development will occur. Mr. Johnson asked how adding a ramp to an existing bridge would apply to the criteria. Mr. Allsbrook clarified that that would be a grade separation and would need to be looked at individually, most likely requiring an EA. In several cases the “exceptions” will kick out a project. If any exception applies to a project, the staff is required to forward it to the Secretary for a final decision on whether the project can be processed as a state minimum criteria or whether an EA is warranted.

Ms. Szlosberg addressed the use of the word “travel.” The concern she expressed is that the DOT could be adding travel lanes that add capacity, and when capacity is added, there are likely to be issues about conformity and air quality. In her discussion with different groups, there has been concern whether the addition of travel lanes for through capacity should really be a part of the minimum criteria. The purpose of minimum criteria, as she explained, should be for adding shoulders, fixing potholes and streamlining basic operations. Many of the comments have come from the use of the word “travel”, and there is a general sense that one should have to do an Environmental Assessment to really find out if and how you’re impacting air quality. Therefore, she encouraged the committee to think about the use of the word “travel.” Cam McRae asked Mr. Allsbrook how he defines the word “travel”. Mr. Allsbrook responded that it consists of a twelve-foot paved lane allowing cars to travel for only short distances. It is the concept that these travel lanes would not be long distances.

There was brief discussion about how many linear feet of “travel” lane could be constructed under the 10-acre threshold if it is on previously disturbed land. Mr. Allsbrook noted that it’s approximately one mile for one 12-foot wide travel lane. Ms. Szlosberg noted that this is a large distance that could have quite a bit of impact and should be taken out of the criteria. Mr. Allsbrook added that one of the things they are trying to do is to identify specifically what project impacts occur within the 10-acre and 25-acre limits of the minimum criteria. The Department of Environment and Natural Resources (DENR) and the State Clearinghouse have both asked the DOT to provide data and analyze the amount of impacts that fall under these thresholds. Therefore, the DOT will be collecting data on an on-going basis to determine if substantial impacts occur with projects that fall beneath the 10-acre (previously disturbed) and 25-acre (two-lane roadway on new location). This data will be used by NCDOT to make better decisions in the future, including a review of the appropriateness of the state minimum criteria. Again, Ms Szlosberg noted that meanwhile, there is the potential to add capacity if the word “travel” is left in the criteria. She also noted that it’s a five year review cycle so it may be awhile before it’s reviewed again and it could negatively effect our air quality in that time period. Mr. Johnson questioned whether the extension of interchange ramps and lanes within one mile of each other along a highway would be covered under the criteria of “travel lanes?” He noted that he wants to retain the ability for interchange ramps within one mile of one another to fall within the state minimum criteria and thus, not require an EA. A subsequent discussion about the difference between a turning lane and travel lane occurred.

Lanny Wilson commented that he believes the DOT divisions should have the flexibility they need to accomplish small projects in an expeditious manner. In addition, he stated that the air quality issues typically occur in the more metropolitan areas. He further elaborated on the many different interpretations of this rule and commented that, thus far, the staff has done an outstanding job in determining which situations require the preparation of an Environmental Assessment. He believes throwing another step in the process would be overly cumbersome. Ms. Szlosberg elaborated that the purpose of an Environmental Assessment is not to slow anything down but to actually take a look at whether the impacts will be detrimental and the one area we are very vulnerable in is air

quality. She noted that 30 counties will be in non-attainment when the new eight-hour standard kicks in in 2003-2004 and asked the committee to pay particularly close attention to. Mr. Wilson stated that the staff should have the flexibility to deal with air quality issues in metropolitan areas, such as Raleigh, when the need arises. Mr. Wilson noted that each division has an environmental officer that should be allowed the flexibility to make the judgements on possible project impacts on air quality. He stated that air quality is not an issue in about two-thirds of the state, and projects in the other two-thirds of the state should be affected by air quality requirements that pertain to the areas with air quality problems. He elaborated that there could be an increased cost and we must spend the taxpayers dollars conservatively. Ms. Szlosberg commented that the role of the division environmental officer is not related to air quality (they have not authority for air quality conformity) and that air quality conformity is done with intense modeling at the MPO level. Environmental officers will not be signing off on air quality issues.

Nancy Dunn elaborated on Mr. Johnson's previous comment about adjoining highway ramps together between interchanges for short distances and that this procedure can actually improve air quality by keeping vehicles moving. Ms. Dunn's concern is that she doesn't want to see the procedure hamstrung and whether air quality is something that should be charged to the environmental officers. Ms. Szlosberg reiterated that the purpose of an EA is to evaluate all the environmental impacts. Ms. Dunn added that she totally agrees with that comment except that she believes the DOT shouldn't restrict small projects with minimal work and funding to address specific air quality issues. She expressed concern about the stewardship of public money. Further, she wonders if there is any other language that could be added to accomplish the points made in this discussion.

A discussion concerning the 10-acre threshold ensued with several board members commenting on their perspectives. Mr. Johnson commented that the 10 acres isn't a lot and if you limit that more, then you begin to effect small urban projects and potentially hurt the DOT and municipalities in delivering needed projects in a timely fashion. The whole point is to stop negative environmental impacts beyond a given acreage while improving traffic congestion, which this rule does. He suggests adding some wording that makes it clear that travel lanes will be added "to reduce congestion." A discussion involving the air quality issues caused by the congestion and the unknown variables occurred. Further, there was general discussion about using a possible formula that is used to identify air quality impacts by adding lanes. Ms. Szlosberg asked what the intent of the minimum criteria really is. Mr. Wilson expressed his concern of reducing the 10-acre limit. He elaborated that it would have effected some of the small urban projects in his division such as in Surf City, North Carolina, where the addition of a third lane in a small urban area is more appropriate than building a four lane highway. Mr. Johnson voiced his concurrence. Ms. Szlosberg suggested the possibility of adding, "passing lane" rather than travel lane. She suggested that the intent of the minimum criteria at the start of the process was to fill potholes, do shoulder and ditch work and to streamline this process. She believes it was not the intent to create new travel lanes. Mr. Johnson suggested that the DOT must have the flexibility to construct short travel lanes. He gave an example of three lanes merging into two lanes and then back to three lanes within a small urban area and the ability to connect the two portions with a third travel lane under this criteria. He feels the recommended criteria (including travel lanes) is a good balance between not hurting the environment and streamlining small project construction. There was the suggestion to remove "travel lanes" from section 8 and create a new section including it completely separately. There was further discussion about changing the wording of the sections to include limiting the miles of travel lanes and restricting construction to certain types of lanes. A suggestion was noted to ask the staff to recommend some possible changes to the language.

Mr. Allsbrook commended the positive comments made during the discussion. He emphasized that these have been the same rules brought forward during the entire rule making process. Items can be changed but the current rule making process is under a time constraint. Lisa Glover, Attorney General's Office, reiterated Mr. Allsbrook's statement about the time constraint. The temporary rules are effective for only 270 days from their approval and will expire on November 20, 2002. If the permanent rules are not in place by that date, there will be no rules at all because the temporary rules will cease to exist, which will essentially mean no minimum criteria projects could occur at all. Mr. Johnson asked whether the temporary rules could be extended. Ms. Glover replied that they cannot because we went through a special procedure through the legislature to have the temporary rules adopted and we would have to go through that procedure again. Ms. Szlosberg noted that we were operating for years without the minimum criteria. Ms. Glover responded that we were, but we were in danger of litigation. This was why we started the rule making process and to make sure we had something in place to protect NCDOT. Without minimum criteria rules in place, we could be sued for filling a pothole without getting the proper environmental documents and all projects could be suspect. She elaborated that small language changes could be made but anything extensive would require more public comments and would interfere with the current timeframe. She noted that she isn't trying to discourage the discussion.

One of the positive aspects is that in discussions with DENR and the Clearinghouse that the NCDOT volunteered to begin to collect data on projects that fall within sections 8 and 15 and this should provide good data to answer many of the questions raised. The data will include information on each project such as the disturbed acres, the location of the project and its purpose. Many of the questions addressed cannot be answered without collecting the data needed in the next few years. She also noted that the criteria does not have to be reviewed in five years but can be reviewed next year if needed. Ms. Szlosberg commented that if we don't know what the impacts would be, why would we err on the side of actually having degradation of the environment verses the opposite. Ms. Glover replied that these rules have come from the same procedures that have been occurring for years and there haven't been any problems to this point. Therefore, it is best to stick with the same operating procedures and then collect the new data to figure out how we can change things to make the rules better.

Marion Cowell asked whether the EPA can influence the projects or if they monitor the projects constructed under the minimum criteria. He elaborated whether there's the possibility that the EPA may see a project we have constructed under the minimum criteria guidelines and feel it should have received environmental document approval. Ms. Glover responded that this is part of the "exceptions" of the minimum criteria and that the public and agencies can always voice their concern about a project. Mr. Cowell asked if DENR could comment on a state minimum criteria project. Ms. Glover responded that there is no formal procedure but they have the ability to watch any project and comment on it at any time. DENR has had several opportunities for input into the permanent rule making procedure and have approved the rules up to this point. Ms. Szlosberg commented that Mr. Cowell's point is exactly what the issue is about. DENR has come to the work with us in good faith and there is no formal oversight of minimum criteria projects and whether any project will have adverse effects to the environment.

Mr. Cowell asked what role the NCDOT will play in the collection of the new data outlining the information on the minimum criteria projects in the next few years. Mr. Allsbrook noted that the NCDOT has volunteered to collect the needed data and provide it to the resource agencies. Mr. Cowell requested a report with the collected information to be made to the board when completed.

Ms. Szlosberg recommended that some kind of action be taken to remove or adjust the word “travel” within the minimum criteria rules. Mr. McRae noted that this is the exact language that DENR has previously approved. Mr. Johnson reconfirmed that the temporary rules will expire soon and that the DOT will begin collecting the data and the minimum criteria will be reviewed again within five years. Mr. Wilson made a motion, seconded by Mr. McRae, to accept the permanent minimum criteria rules as currently written in section number 8. There was brief discussion about the proper procedures for making a motion and whether there was already a motion on the floor concerning the language of section 8. The motion to accept the rules as presented was passed. Ms. Szlosberg was the only committee member who opposed the vote, and Ms. Szlosberg noted given the results of that vote there was no point in making a second motion to remove the word “travel.”

Mr. Allsbrook then presented the comments submitted on section 12. The specific concern was item (i), secondary road paving and the potential increased in sedimentation runoff and development due to paving a secondary road. Mr. Allsbrook suggested that paving has a positive effect on reducing sediment runoff and the “exceptions” recommend an EA if there is the potential for development. Another comment requested that a programmatic EIS on the entire gravel-road paving program be prepared. The State Environmental Policy Act does not require programmatic EIS’s for actions that meet the state minimum criteria. Ms. Szlosberg asked whether the paving statement is part of the twenty-five acre rule. She furthered asked whether we should put a maximum size on the paving of secondary roads. Mr. Allsbrook responded that it’s not a part of the twenty-five acre statement (new road construction) and that he does not see any reason to put a maximum acreage on the paving of secondary roads.

Mr. Allsbrook then presented the comments submitted for section 15, which specifically deals with the twenty-five acre rule. This section was talked about in length at a previous committee meeting. The Southern Environmental Law Center requested that this statement be deleted in its entirety because of the enormous impacts that could occur. Mr. Allsbrook points out that if there are potential negative impacts associated with this type of project, it will be addressed in the “exceptions” and would require an EA. If applicability of the state minimum criteria is still unclear, then the project will be elevated to the Secretary for a decision. Ms. Szlosberg noted that the staff has agreed to include information about negative environmental impacts in their data collection, whether by aerial photography of the projects or other means. Mr. Cowell asked for clarification of where a project of this type may be constructed. He contended that this statement gives the DOT a lot of latitude in project construction and could be problematic. Mr. Allsbrook concurred that it does give the DOT a lot of latitude. He suggested that this item allows the DOT to construct industrial and school access roads. Most divisions that have constructed a project under this statement have done so for this reason. Ms. Szlosberg asked whether we could include a statement specifying “for school or industrial access roads only.” Mr. Allsbrook felt this would be too limiting and we would leave something out. He strongly feels the “exceptions” take care of this concern. Ms. Szlosberg noted that the public comments have stated that our exceptions are too broad. Mr. Allsbrook agreed and noted that being “broad” is the intent -- to allow for flexibility and professional judgement. Ms. Szlosberg noted that it is the DOT staff making the judgements and many times the staff does not have the experience and knowledge to make the correct call. Mr. Allsbrook agreed and noted that the staff is now receiving the adequate training and will sufficiently improve over time. Mr. Allsbrook noted that DENR did not agree with including this item in the state minimum criteria but, after further discussion, understood its need. He further added that this item is not used for industrial and school access projects as much as they had once thought because public service funds in the recent past have been so low. However, discretionary funds are being used more and more for economic development purposes, including access for industry.

Ms. Dunn commented that she is concerned about limiting the amount of impacts to the environment but, at the same time, was apprehensive with micromanaging the staff. She further would like to see the Board clearly state its objectives to better guide the staff. She also asked whether we should wait the full five years before reviewing the permanent rules again. Ms. Szlosberg agreed with providing some policy guidance or statement for the staff regarding the intent and use of the state minimum criteria. She recommended that the staff develop a guidance statement for presentation at the next meeting.

Mr. Allsbrook presented the comments submitted on section 27, which has been added since the minimum criteria was first used ten years ago. This section pertains to the construction of mitigation sites. The comments concerned the lack of assessing the appropriateness of preservation versus restoration for mitigation. In most cases, the resource and permitting agencies make the determination of either preservation or restoration for the DOT project. The other comment recommended programmatic EIS 's for the entire wetland mitigation program. Mr. Allsbrook noted again that the State Environmental Policy Act does not require this.

The "exceptions" section had several public comments including: they are too vague; EA's should be required in any circumstance; EA's should be used to evaluate non-routine projects; the rules are not specific enough; and exceptions could be misused. Mr. Allsbrook commented that the minimum criteria projects are routine projects and if there is ever anything that signals the need for an EA, an EA will be pursued. He also pointed out that the listed exceptions are identical to the minimum criteria exceptions with DENR and the State Clearinghouse. One of the goals has been to make these three documents the same. Seeing no further questions, Mr. Allsbrook concluded the presentation.

Ms. Szlosberg advised that the next step for the minimum criteria is to take it before the full Board. She accepted a motion to do so from Mr. Johnson and seconded by Mr. Wilson. Discussion on the motion began with Ms. Dunn. Ms. Dunn recommended that a report on the collected minimum criteria data be presented in two or three years to the Board and that the staff develop a policy statement on how the department should look at environmental issues when applying state minimum criteria. The motion to send the minimum criteria to the Board was voted on and passed.

A second recommendation was made to bring a report back to the board with the collected data in two or three years, rather than five years. Mr. Allsbrook concurred and stated that data is already being collected. He suggested that staff can return to the committee at a later date to present the findings. Ms. Dunn also elaborated on her suggestion to have the staff consider the formation of a policy regarding department-wide environmental concerns. This policy should be simple and she does not want anyone to spend too much time on. Mr. Wilson noted the Environmental Stewardship Policy that was passed earlier in the year. Ms. Szlosberg requested that copies of the Environmental Stewardship Policy be given to each Board Member and noted the web page. Ms. Dunn proposed that her suggestion not be a formal motion but only a recommendation to the staff.

Ms. Szlosberg noted the time constraints and amended the agenda. The agenda item "Evaluating Clean and Alternative Fuels for NCDOT" was postponed until the October committee meeting. The meeting was extended for thirty additional minutes since the committee had a quorum to continue. Mr. Wilson requested an amendment to the August EPPC meeting minutes to reflect his attendance.

Ms. Szlosberg introduced Bill Gilmore, Ecosystem Enhancement Program Transition Manager, and Roger Sheats, Deputy Secretary for Environment, Planning and Local Government Affairs, to provide an update on the Mitigation Process Improvement Initiative. Deputy Secretary Sheats gave opening remarks and Mr. Gilmore gave a brief overview on their presentation, “NC’s Ecosystem Enhancement Program ‘EEP’ – A New Approach to Mitigation.”

Mr. Gilmore emphasized that the transition to the EEP would be completely in effect when a Memorandum of Agreement (MOA) between the participating agencies is signed and when mitigation assets are in excess of demand. The purpose of the MOA will be to provide a legal basis for the US Army Corps of Engineers acceptance of the mitigation as part of the Section 404 permitting process. Environmental interest groups will also review the MOA, which is being prepared by Chris Russo of DENR. The MOA should be in effect no later than the end of this year. There are several high priority activities that the EEP participants are currently concentrating on, such as the MOA development, analyzing the assets and anticipated impacts (debits) for the program, developing advance mitigation processes and programs, completing the transition organization chart, and working on the major tasks identified for the success of the transition. There are also a series of public and interest group workshops that are high priority. These will take place throughout the state and will educate the stakeholders on the EEP.

A short-term schedule outlined the timeframes of the six priorities and how they will come together during the initial phase of the transition. By the end of 2002, the EEP will be procuring land and mitigation sites to augment the mitigation currently being developed by NCDOT’s Natural Systems Unit, managed by Charles Bruton, and DENR’s Wetlands Restoration Program, managed by Ron Ferrell. Charters will direct teams to work on tasks throughout the transition that are crucial to the implementation of the EEP, such as functional needs methodology, functional replacement for streams and wetlands, database development, and organizational development. The transition will re-work the way mitigation is done presently into a functional replacement system. This is a major change for North Carolina and we will be one of the first states to make this positive change in the nation. Functional replacement takes into consideration the type of wetland and the functions it provides. This will be one of the foundations of the EEP.

Mitigation will be developed on a watershed basis. A team will work on watershed planning for the EEP, and two additional teams will review the functional replacement of both streams and wetlands. This is also a key foundation to the EEP. Another team will be developing a multi-agency database to be used to define the programs, provide safeguards for mitigation credits, provide systems to assess the data by external forces and manage fiscal aspects. This will be a daunting task because of its complexity. This database will demonstrate to the public, interest groups and regulatory agencies how we are meeting the laws regarding compliance. Another team will work on the organizational development of the EEP. Tasks associated with the latter include developing job classifications, organizational structures, roles and responsibilities and assembling operating procedures for the new organization. Overall, the transition is a tactical approach to mitigation. It’s converting a reactive process to a proactive process and has the intentions “to get ahead of the game.”

Some initial thoughts of the program include an eight eco-region concept, which will be used to focus mitigation on both restoration and preservation mitigation opportunities. Mr. Johnson asked whether any effort was made to divide these regions based upon divisions or economic development areas. Mr. Gilmore responded that every effort was put into place to align the eco-regions with previous divisions but that there were so many different



jurisdictions involved that it was very difficult. The map was divided based on the four physiographic regions of the state, which most agencies abide to. In order to break up the regions into a manageable area for the new process, it was important to have a north to south and east to west boundary. Mr. Sheats elaborated on the purpose of the eco-regions. Ms. Szlosberg noted that this doesn't indicate impacts occurring in certain river basins while being mitigated in different eco-regions. Mr. Gilmore noted that the current permitting and mitigation process doesn't even follow the current DOT division boundaries but by cataloging units. Cataloging units indicate specifically where the impact occurs. Mr. Johnson noted that some of the eco-regions do follow division boundaries, but he is still concerned with the central part of the map where it's not at all in alignment with current divisions. Mr. Gilmore stated that they are also looking at a larger compensatory mitigation program that would allow preservation enhancements to be included. Mr. Sheats elaborated on the allowances encompassing the preservation aspects within the eco-regions.

As part of the Transition Team for the EEP, the two mitigation operation managers (Charles Bruton and Ron Ferrell) are evaluating the minimum restoration needs and developing preservation initiatives within the eco-regions. Mr. Gilmore reviewed the transition organization chart elaborating on each component. The Policy and Oversight Committee will include Deputy Secretary Sheats, Chief Deputy Secretary Dempsey Benton of DENR, and Regulatory Chief Ken Jolly of the USACE. Two other groups will serve as advisors to the Transition Manager and Sponsors and will include the regulatory agencies. Administrative staff will be needed, and staff from NCDOT, DENR, and the USACE are developing the programs and managing the charters and team tasks. Specifically, the Liaison Council will include the environmental groups and representatives and will be appointed by the Sponsors. The Technical Advisors will act as the academic component of the transition, operating as an external audit process. It will be lead by Dr. Mark Brinson of East Carolina University. The existing staff at WRP and NCDOT will continue to work on mitigation.

The three sponsor agencies have been working very diligently to help develop the EEP. However, there continues to be a critical need to have additional staff, including one from DENR and one from USACE to assist the Transition Manager in the daily activities of the transition. Mr. Gilmore noted that it has been very difficult to manage and accomplish the fourteen tasks with the limited staff resources. The current DOT and DENR staff have been able to assist in a limited capacity but are limited because of their other current programs and obligations to deliver the transportation program under the current process. Mr. Sheats noted that DOT has committed \$300 million for mitigation in the next three years. He suggested that the transportation program is likely to increase over the next several years, and with it, a growing need to provide mitigation in an effective, cost efficient manner.

Overall, Mr. Sheats believes this multi-agency effort has created a machine that will allow DOT to get ahead of the curve in delivering quality mitigation before impacts are actually incurred. The official "go live date" for the EEP is January 1, 2005. Ms. Szlosberg asked Mr. Sheats to discuss the avoidance component of the EEP. He responded that the goal of the EEP is in no way relieving the DOT of first, avoiding impacts, and second, minimizing impacts. In sum, this process has been focusing on more than just mitigation, but all of those facets that have caused project delays and higher costs. He also noted the importance of bridging buffers and environmentally sensitive areas, especially in the eastern part of the state. The key message that should be passed to the entire Board is that there are many different activities that must come together in concert to create a successful program, which will ultimately remove huge problems from the DOT. Ms. Szlosberg noted that theoretically if we do a better job with avoidance and minimization, then the cost would go down because we

don't have as much to mitigate. Mr. Sheats strongly agreed and elaborated on the importance of avoidance and minimization.

Ms. Szlosberg asked whether a motion should be made to fund the positions needed for DENR and USACE during the transition period so that the EEP can move forward. Ms. Dunn asked whether that was something the committee needed to do. Ms. Szlosberg wasn't sure how else it would get done. Mr. Sheats noted that it would be nice for staff to have the latitude to move forward with the necessary positions that support the development of the EEP. Ms. Dunn asked exactly what action is needed from the committee. Mr. Sheats responded that he would like to be able to make staffing decisions to support the EEP, noting that getting resources from other agencies to staff the EEP is more difficult than DOT's internal staffing process.

Mr. Johnson commented that if the intent of this new organization is to save time and money, why would we set up a whole new hierarchy with new divisions, especially since we have capable staff in the current division offices? He suggested it is a whole lot quicker to do things locally rather than go back and forth with Raleigh. Further, why would we create new divisions that overlap the boundaries of the current divisions since the current decision-making process is perfectly adequate in the field close to where the action is going on? Mr. Sheats elaborated that this is a different subject but is being worked on. Mr. Johnson suggested that if we are looking to save time and money, it is essential we do so. Mr. Sheats noted that this new process is really a consolidation of the way we currently do things by including different agencies.

Ms. Dunn noted that Mr. Sheats mentioned moving vacant positions around and wanted to know what kind of scope was included and where the funding would come from. Mr. Sheats responded ideally eleven or twelve are needed but today we are talking about two positions. He had discussed with Becky Keith (Director of Human Resources at DOT) how this could be dealt with internally. She has indicated the best way to achieve more positions quickly is through position reallocation. However, the difficult task is getting the manpower to the partner agencies. Ms. Dunn asked if we were just reallocating funds that are already available for other positions. Mr. Sheats responded that this cannot be done outside of the DOT. She asked where that money would come from. Mr. Sheats wasn't sure but noted that a year ago, \$300 million dollars was allocated by the Secretary for the EEP, and most of it was set up through federal highway money. Roger indicated Ms. Keith will find the appropriate funding source for positions when needed. Ms. Szlosberg noted that it comes from a previously set up pot of money. Ms. Dunn commented on why this would take action from the Board since they don't authorize personnel decisions. Mr. Wilson requested color copies of the presentation for the committee members.

Janet D'Ignazio, Chief Officer – Planning and the Environment, clarified that the staff is giving the Board advance warning that we are likely to request, if needed, two more positions as part of the DOT Funded Positions Program at the October meeting. In particular, these are short-term positions that will solely work on the development of the EEP. We have to absolutely and positively have staff from other agencies at the table working with us to transition into the great program its going to be. It's a multi-agency affair and right now we are getting limited amounts of time from the other agency staff. Therefore, it is effecting our ability to get permits accomplished because we are pulling these people into assisting with the EEP design work. Our goal is to separate the two components by creating positions that will only work on the EEP and its transition and leaving others to do their normal permitting activities. Ms. Dunn commented that this is clear but still has hesitation on where the money will come from. Ms. D'Ignazio explained that the entire EEP and the \$300 million comes from cash balance of the highway trust fund. Ms. Dunn asked whether that's something that the Board had already

approved. Ms. D'Ignazio clarified that what the Board will actually approve are the individual actions as the money is spent. Ms. Dunn asked where that money would have been otherwise spent. Ms. D'Ignazio explained that for the moment, it's sitting in the bank and we're pulling forward future expenditures for what would be spent on mitigation in three years. Ms. Dunn noted that she will make a motion if necessary. Mr. Wilson asked for a clarification on how many positions were being requested. The response was two positions. A brief discussion occurred about the funding of these positions. Ms. Szlosberg requested that more information be brought to the committee in October. Several Board Members requested more information because of the confusion surrounding the funding of the positions and the funding of the new EEP program. Ms. Dunn concluded that the intentions of working openly with other agencies and streamlining is very important and that she doesn't want her questions or comments to be misinterpreted as though she doesn't support what's being done.

Ms. Szlosberg introduced Mr. Sheats again for a special announcement. Mr. Sheats introduced Dr. Greg Thorpe, who has accepted the appointment as the new Manager for the Project Development and Environmental Analysis Branch. Dr. Thorpe will officially start September 16, 2002. Ms. Szlosberg added that he was most recently the Acting Director of the Division of Water Quality with DENR and he brings a tremendous amount of expertise and relationships.

A motion was made to adjourn the meeting at 9:32 AM.

The next meeting for the Environmental Planning and Policy Committee is scheduled for Wednesday, October 2, 2002 at 8:00 AM in the Board Room (Room 150) of the Transportation Building.

NS/jh/em